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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------------------|------------------|
| 10/730,377 | 12/08/2003 | Brian A. Russell | BRITEK.007C1 | 2840 |
| 20995 | 7590 | 08/12/2004 | | |
| KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614 | | | EXAMINER STASHICK, ANTHONY D | |
| | | | ART UNIT 3728 | PAPER NUMBER |

DATE MAILED: 08/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|------------------------|---------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/730,377 | RUSSELL, BRIAN A. |
| | Examiner | Art Unit |
| | Anthony Stashick | 3728 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 08 December 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>03222004</u> . | 6) <input type="checkbox"/> Other: ____ . |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 contains the phrases “at least one thruster provided on the first side of the layer; at least one chamber provided on the second side of the layer adapted to receive a corresponding one of the at least one thruster;...”. It is unclear as to whether the chamber and the thruster are formed on the layer or are provided by another layer adjacent to the layer. If formed on the same layer, it is unclear how a thruster and a chamber can be provided in the same place on the same layer.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by any one of the following references: Fowler 3,834,046, Colonel et al. 4,798,009, Vermeulen 4,999,931, Snow 5,595,003, or the European reference to Menghi Shoes 578,618 (Menghi ‘618).

Fowler ‘046 discloses all the limitations of the claim including the following: a sole 20, 22, 24 formed of a resilient layer of stretchable material 24 having a first side (side facing 20) and a second side (side facing 22); at least one thruster (Protrusion on either of 20 or 22) provided on the first

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side of the layer; at least one chamber (located between the protrusions in 20 or 22) provided on the second side of the layer and adapted to receive a corresponding one of the at least one thruster; a wall (see Figure 2, wall is 21) at least partially surrounding the resilient layer to prevent horizontal displacement of the layer when the thruster is compressed against the layer into the chamber.

Colonel et al. '009 discloses all the limitations of the claim including the following: a sole (that shown in Figure 2) formed of a resilient layer of stretchable material 16, 17 or 18 having a first side (facing the top of the page) and a second side (facing the bottom of the page); at least one thruster (protrusion from any one of the layers) provided on the first side of the layer; at least one chamber (area between protrusions located on any one of the layers) provided on the second side of the layer and adapted to receive a corresponding one of the at least one thruster; a wall 36 (the side wall of the shoe shown in Figure 4) at least partially surrounding the resilient layer to prevent horizontal displacement of the layer when the thruster is compressed against the layer into the chamber.

Vermeulen '931 discloses all the limitations of the claim including the following: a sole 2 formed of a resilient layer of stretchable material 6 having a first side (top side of 6) and a second side (bottom side of 6); at least one thruster (protrusion form either of 10) provided on the first side of the layer; at least one chamber (14) provided on the second side of the layer and adapted to receive a corresponding one of the at least one thruster (see Figure 6B); a wall 2 at least partially surrounding the resilient layer to prevent horizontal displacement of the layer when the thruster is compressed against the layer into the chamber.

Snow '003 discloses all the limitations of the claim including the following: a sole 10, 12 formed of a resilient layer of stretchable material 14 having a first side (top side) and a second side (bottom side); at least one thruster (protrusion 20) provided on the first side of the layer; at least one chamber 22 provided on the second side of the layer and adapted to receive a corresponding one of the

at least one thruster (see Figure 3); a wall 40 at least partially surrounding the resilient layer to prevent horizontal displacement of the layer when the thruster is compressed against the layer into the chamber.

Menghi '618 discloses all the limitations of the claim including the following: a sole 1 formed of a resilient layer of stretchable material having a first side (top side) and a second side (bottom side); at least one thruster 3 provided on the first side of the layer; at least one chamber 5 provided on the second side of the layer and adapted to receive a corresponding one of the at least one thruster (see Figure 2); a wall (the upper of the shoe that the insole is placed within) at least partially surrounding the resilient layer to prevent horizontal displacement of the layer when the thruster is compressed against the layer into the chamber.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Stashick whose telephone number is 703-308-3876. The examiner can normally be reached on Monday through Thursday from 6:30 am until 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Anthony Stashick
Primary Examiner
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